Supreme Court, U.S.
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No. 94-782

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1994

In re: JAMES CONSTANT, *Debtor*

ARGEREY CONSTANT, JAMES CONSTANT,
Petitioners,
v.
DAVID L. RAY, SALTZBURG, RAY & BERGMAN,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

ANTHONY de ALCUAZ
Counsel of Record for
Respondents *David L. Ray and Saltzburg, Ray and Bergman*

SKJERVEN, MORRILL, MacPHERSON,
FRANKLIN & FRIEL
25 Metro Drive, Suite 700
San Jose, California 95110
(408) 283-1222

QUESTIONS PRESENTED FOR REVIEW

Respondents disagree with the petitioners' statement of the questions presented. Petitioners failed to timely appeal from the bankruptcy court's judgment within the mandatory ten-day deadline set forth by Bankruptcy Rule 8002(a). This defect in the Constants' appeal is jurisdictional and requires denial of the Constants' petition for writ of certiorari.

However, if one assumes arguendo that appellate jurisdiction exists for the limited purpose of reviewing the bankruptcy court's subject matter jurisdiction, the only question presented would be:

Did the bankruptcy court have subject matter jurisdiction to hear this "core proceeding" brought by the bankruptcy trustee to recover the bankruptcy estate's fraudulently conveyed assets?

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BRIEF IN OPPOSITION

OPINIONS BELOW

In addition to the opinions reproduced in the petitioners' appendix, the following opinions and orders are relevant to the petition:

Bankruptcy Court's Findings of Fact and Conclusions of Law After Trial

Bankruptcy Court's Judgment

Bankruptcy Court's Order in Aid of Judgment Requiring Assignment of Patents

These opinions and orders are set forth in the appendix.

JURISDICTION

The underlying bankruptcy court judgment from which the Constants appeal was entered on March 12, 1993. Pursuant to the mandatory ten-day deadline to appeal set forth by Bankruptcy Rule 8002(a), the Constants' June 8, 1993 Notice of Appeal to the district court was untimely. Therefore, the Constants' petition for writ of certiorari should be denied for lack of jurisdiction.

STATUTES AND RULES

In addition to those statutes and rules cited by petitioners, the following statutes and rules are involved in the case:

28 U.S.C. § 157(b)(1), (b)(2)(H)

28 U.S.C. § 158(a)

Bankruptcy Rules 7070, 8002(a)

California Civil Code §§ 3439.04(a), 3439.05, 3439.07

The pertinent text of these statutes and rules is set forth in the appendix.

STATEMENT OF THE CASE

This case is an adversary proceeding in the bankruptcy of debtor-petitioner James Constant. The Chapter 7 Bankruptcy Trustee, respondent James L. Ray, brought this adversary proceeding against the wife of Mr. Constant, petitioner Argerey Constant, to return to the bankruptcy estate 22 United States patents that the insolvent Mr. Constant fraudulently transferred to her to avoid execution thereon by his creditors.

I. The Fraudulent Transfer[1]

In a prior lawsuit, Mr. Constant sued a number of electronics companies (the "Creditors") in district court, alleging patent infringement. On November 9, 1987, the

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[1] The relevant facts set forth herein are found in the bankruptcy court's findings of fact and conclusions of law after trial. Appendix at 16-30.

district court entered judgment against Mr. Constant and in favor of the Creditors. On May 10, 1988, the district court taxed costs against Mr. Constant in favor of the Creditors in the amount of $123,832.00, with such costs being entered into and made part of the earlier judgment.

Mr. Constant wrote his Creditors and represented that he was insolvent and could not pay the judgment debt. However, when the Creditors wrote to Mr. Constant on August 17, 1988 and informed him that they were prepared to enforce their judgment against him, Mr. Constant acted quickly to frustrate his Creditors.

On August 24, 1988, Mr. Constant assigned to his wife his remaining assets -- his 22 United States patents. The sole consideration purportedly paid by Mrs. Constant for all 22 patents was ten dollars (as found by bankruptcy court in this adversary proceeding, it is doubtful that even this amount was actually paid). In both deposition and at trial, Mr. Constant admitted his intent to hinder his Creditors, that he felt "forced" by the Creditors to assign the patents to his wife.

II. Trial In The Bankruptcy Court

Trustee Ray filed this adversary proceeding against Mrs. Constant in October, 1991 to return the 22 fraudulently transferred patents to the bankruptcy estate. Statutory authority for Trustee Ray's action was provided by the

Bankruptcy Code, 11 U.S.C. § 544(b).[2] Mr. Constant was *not* named as a defendant, and Mr. Constant was never made a party.

On November 9, 1992, the bankruptcy court, Judge Kathleen T. Lax presiding, tried the disputed issues. The bankruptcy court ruled in favor of Trustee Ray. The bankruptcy court issued written Findings of Fact and Conclusions of Law on March 9, 1993, finding that Mr. Constant intended to defraud his Creditors by assigning his patents to his wife, that Mr. Constant did not receive reasonably equivalent value for the patents, that Mr. Constant was insolvent at the time of the assignment, and that Mrs. Constant (who knew of her husband's legal and financial affairs) did not receive the patents in good faith. *See* Appendix at 16-30.

On March 12, 1993, the bankruptcy court entered final judgment, avoiding Mr. Constant's fraudulent transfer and declaring the patents to be part of the bankruptcy estate subject to disposition by Trustee Ray. *See* Appendix at 33. On March 15, 1993, the bankruptcy court entered an Order in Aid of Judgment Requiring Assignment of Patents. *See* Appendix at 36. This Order directed, for recording

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[2] Section 544(b) provides that "[t]he trustee may avoid any transfer of an interest of the debtor in property . . . that is voidable under applicable law by a creditor . . . ." Here, the "applicable law" was California's Uniform Fraudulent Transfer Act, Cal. Civ. Code §§ 3439.04(a), 3439.05, and 3439.07. *See In Re Agricultural Research & Technology Group v. Hayes*, 916 F.2d 528, 534 (9th Cir. 1990) (under 11 U.S.C. § 544(b), bankruptcy trustee "stands in the overshoes" of the debtor's creditors for purposes of state law fraudulent conveyance law) (citing *Schneider v. O'Neal*, 243 F.2d 914 (8th Cir. 1957)).

purposes, Mrs. Constant to execute an Assignment of the 22 patents to Trustee Ray and, if Mrs. Constant refused, directed the clerk of the bankruptcy court to execute the Assignment on Mrs. Constant's behalf. *See generally* Bankr. R. 7070. Mrs. Constant failed to execute the Assignment as ordered by the bankruptcy court. Accordingly, on June 1, 1993, the clerk of the bankruptcy court executed the Assignment on behalf of Mrs. Constant. *See* Appendix at 39.

III. Mr. Constant's Attempted Intervention In This Adversary Proceeding

Shortly before the trial, Mr. Constant filed a motion in the bankruptcy court to intervene in this adversary proceeding. Through intervention, Mr. Constant sought to interject into the case the legal arguments (based on 35 U.S.C. § 261 and 28 U.S.C. § 1962) that are asserted in the present petition for writ of certiorari.

Mr. Constant's motion was tardy, being filed long after the discovery cut-off date and the Pretrial Order. The bankruptcy court denied Mr. Constant's motion to intervene for a number of reasons, including the motion's untimeliness and Mr. Constant's admitted lack of legal interest in the patents that had been assigned to his wife.

As determined by the Ninth Circuit, and not contested in the Constants' petition, the bankruptcy court's denial of Mr. Constant's motion to intervene terminated his involvement in this case and foreclosed him from contesting any of the bankruptcy court's actions in this proceeding. *See*

Petitioners' Appendix A, at 3 (Ninth Circuit's opinion rejecting Mr. Constant's appeal for lack of standing). *See generally Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 378 (1987) (applicant whose motion to intervene is denied may "not appeal from any subsequent order or judgment in the proceeding").

IV. Mrs. Constant's Untimely Appeal

Mrs. Constant is the only party to this adversary proceeding who had standing to raise the statutory arguments presented in the present petition. Her appeal, however, suffers a fatal jurisdictional defect -- she did not timely appeal the bankruptcy court's final judgment to the district court within the mandatory ten-day deadline set forth in Bankruptcy Rule 8002(a).

The bankruptcy court's final judgment was entered on March 12, 1993, and its order in aid of judgment was entered on March 15, 1993. Mrs. Constant (together with her husband) filed her notice of appeal on June 8, 1993, long after the ten-day deadline of Bankruptcy Rule 8002(a). Therefore, as determined by the district court and the Ninth Circuit, there was no jurisdiction of Mrs. Constant's appeal. *See* Constants' Petition, Appendices A and B.

In their petition, the Constants do not dispute that their June 8, 1993 appeal was untimely. *See* Constants' Petition, at 6. Instead, they argue that despite this untimeliness, they may still present arguments going allegedly to the subject matter jurisdiction of the bankruptcy court.

ARGUMENT

I. Mrs. Constant's Failure To Timely Appeal Divested The Appellate Court Of Jurisdiction, And The Constants' Petition Should Be Denied On That Basis

As admitted in the Constants' petition, their appeal from the bankruptcy court's final judgment was untimely under Bankruptcy Rule 8002(a). Based on this untimeliness, the Ninth Circuit concluded there was no appellate jurisdiction, and affirmed the district court's dismissal of the appeal on that basis. *See* Constants' Petition, Appendix A at 3-4.

This ruling was consistent with -- and compelled by -- the holdings of this Court that deadlines to appeal are "mandatory and jurisdictional," and that the failure to meet them precludes appellate review. *See, e.g., Budinich v. Becton Dickenson & Co.*, 486 U.S. 196, 203 (1988) (interpreting Fed. Rules App. Proc. 2, 3(a), 4(a)(1), 26(b)). It was also consistent with intermediate appellate court decisions specifically interpreting, and strictly construing, the ten-day appeal deadline set forth by Bankruptcy Rule 8002(a). *See In re Lane*, 991 F.2d 105, 107 (4th Cir. 1993); *In re Souza*, 795 F.2d 855, 857 (9th Cir. 1986).

Under these well-established authorities, the Constants' failure to timely appeal from the bankruptcy court's final judgment under the "mandatory and jurisdictional" deadline of Bankr. R. 8002(a) bars their present appeal.

The Constants' petition attempts to circumvent this mandatory and jurisdictional rule against late appeals. The Constants argue that Federal Rule of Civil Procedure 12(h)(3), which is incorporated by Bankruptcy Rule 7012, permits a party to contest alleged lack of subject matter jurisdiction even by way of a late and otherwise jurisdictionally barred appeal.

This argument misreads Rule 12(h)(3). The text of the rule states:

> Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

By its own terms, Rule 12(h)(3) applies only to actions that are ongoing. In the present case, the adversary proceeding had already been finally decided, with final judgment entered and all appeals deadlines exhausted. The case was over, and the Constants could not revive it by way of an untimely appeal.

Even the authorities cited in the Constants' petition (none of which permits an *untimely appeal* to challenge lack of jurisdiction) recognize that Rule 12(h)(3) has no application in this matter. *See, e.g., Eisler v. Stritzler*, 535 F.2d 148, 151 (1st Cir. 1976) ("The well established rule in the federal courts is that subject matter jurisdiction may be litigated at any time *before the case is finally decided.*") (emphasis added).

Further, the Constants' fanciful reading of Rule 12(h)(3) would create intolerable uncertainty in the bankruptcy appellate process. Under the Constants' view of the Rule, no matter how (inexcusably) late the appeal, it would still have to be heard if the late appellee involved the mantra of "subject matter jurisdiction." This would undermine entirely the unambiguous and unequivocal deadline to appeal set forth in Bankruptcy Rule 8002(a).

The Constants' appeal from the bankruptcy court's final judgment is untimely and jurisdictionally barred, and their petition for writ of certiorari should be denied on that basis.

II. Regardless, The Bankruptcy Court Had Jurisdiction To Hear This Fraudulent Transfer Action

Even if one assumed, arguendo, that the Constants' position were correct -- that alleged lack of subject matter jurisdiction could be raised by way of any untimely appeal -- the bankruptcy court plainly had subject matter jurisdiction of this adversary proceeding brought by Trustee Ray to recover the bankruptcy estate's fraudulently conveyed assets.

The Bankruptcy Code provides that the bankruptcy court may "hear and determine all cases under title 11 and all core proceedings arising under title 11," subject to review by the district court. 28 U.S.C. §§ 157(b)(1), 158. The present adversary proceeding brought by Trustee Ray pursuant to 11 U.S.C. § 544(b), plainly "arises under" title 11. *See supra* note 2. It is also plainly a "core proceeding"

as defined by the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(H) ("Core proceedings include, but are not limited to . . . proceedings to determine, avoid, or recover fraudulent conveyances"). As such, the bankruptcy court had subject matter jurisdiction.

Neither of the statutory arguments raised in the Constant's petition -- that the patents laws, 35 U.S.C. § 261, preempt fraudulent transfer actions with respect to fraudulently transferred patents, and that 28 U.S.C. § 1962 somehow frustrates Trustee Ray's lawsuit -- goes to the jurisdiction of the bankruptcy court. At most, these arguments would be matters of statutory interpretation to be considered by the bankruptcy court in hearing and determining this proceeding pursuant to 11 U.S.C. § 544(b). They would not affect the subject matter jurisdiction of the court. *Bell v. Hood*, 327 U.S. 678, 776 (1946) (complaint that avers federal cause of action, even if it fails as a matter of law to state a claim, nonetheless raises a federal question conferring jurisdiction unless invoked federal statute "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly unsubstantial and frivolous"); *accord Duke Power Co. v. Carolina Environ. Study Group*, 438 U.S. 59 70-71 (1978).

Indeed, the Constants' argument that 35 U.S.C. § 261 somehow "preempts" California fraudulent transfer law (which is incorporated by 11 U.S.C. § 544(b)) is precisely the type of merits-based argument going to the defense of an action that has consistently been held *not* to divest the federal courts of jurisdiction. *See Piekarski v. Home Owners Savings Bank*, 956 F.2d 1484, 1489 (8th Cir.) (preemption

defense going to choice of law rather than choice of forum does not raise jurisdictional concerns and may be waived), *cert. denied*, 113 S. Ct. 206 (1992); *Dueringer v. General American Life Ins. Co.*, 842 F.2d 127, 130 (5th Cir. 1988) (same); *Johnson v. Armored Transport*, 813 F.2d 1041, 1043-1044 (9th Cir. 1987) (same).

Neither of the arguments presented in the Constants' petition goes to the subject matter jurisdiction of the bankruptcy court. Thus, even under the Constants' erroneous view of Federal Rule of Civil Procedure 12(h)(3), the district court's and the Ninth Circuit's rejection of their appeal as untimely was proper.

III. On The Merits, The Constants' Arguments Are Baseless

As shown above, Mrs. Constant's failure to timely appeal from the bankruptcy court's final judgment, and the denial of Mr. Constant's motion to intervene, foreclose the Constants from making the statutory arguments presented in their petition. However, since the Constants' petition presents these arguments on the merits, Trustee Ray will respond very briefly.

Nothing in the language or the legislative history of the bankruptcy or patent laws suggests that fraudulently transferred patents should be exempt from the operation of state fraudulent transfer law incorporated by 11 U.S.C. § 544(b). Nor would it be sensible public policy to permit an insolvent patent owner to fraudulently convey his or her

patents with impunity, to the detriment of his or her creditors.

Specifically, the assignment provisions of the United States patent laws do not speak to the avoidance of fraudulently transferred patents. Rather, they simply provide that "[a]n assignment . . . shall be void as against any subsequent purchaser or mortgagee for valuable consideration, without notice, unless it is recorded" in the Patent Office. 35 U.S.C. § 261. Section 261 does not indicate any congressional intent to preempt the operation of state fraudulent transfer law with respect to patents.

As this Court held in *Allen v. Riley*, 203 U.S. 347 (1906), the assignment provisions of the United States patent laws leave the states with "the power (certainly until Congress legislates upon the subject) with regard to the provision which shall accompany the sale or assignment of rights arising under a patent, to make reasonable regulations concerning the subject, calculated to protect its citizens from fraud." *Id.* at 355. "[Congress] has simply provided that every patent, or interest therein, shall be assignable in writing, leaving to the various states the power to provide for the safeguarding of the interests of those dealing with the assumed owner of a patent, or his assignee." *Id.* at 356. Under *Allen*, the states have the power to regulate and proscribe the fraudulent transfer of patents to the detriment of creditors.[3]

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[3] The Constants' citation to *In re Peregrine*, 116 Bankr. 194 (C.D. Cal. 1990), is unavailing. That case had nothing to do with fraudulent transfer law or this case, and did not purport to challenge this

Moreover, even assuming arguendo that 35 U.S.C. § 261 somehow operated to limit state fraudulent transfer claims, it would not help Mrs. Constant in this case. The bankruptcy court's factual findings of Mrs. Constant's lack of good faith and her knowledge of the fraudulent nature of the assignment (Appendix at 21-25) would preclude any conceivable reliance on Section 261 to frustrate Trustee Ray's fraudulent transfer action. *See* Constants' Petition, Appendix A, at 7. Mrs. Constant was not a "subsequent purchaser . . . for valuable consideration" or "without notice" of the fraudulent nature of the conveyance. 35 U.S.C. § 261.

The Constants' reliance on 28 U.S.C. § 1962 (judgments shall be liens on property located in state) is also unfounded. That section has no application to fraudulent conveyance law. Under 11 U.S.C. § 544(b) and Bankruptcy Rule 7070, the bankruptcy court had the authority to avoid Mr. Constant's fraudulent transfer of patents to Mrs. Constant, who was properly before the Court and did not dispute its personal jurisdiction over her. *See also* Constants' Petition, Appendix A, at 6.

In short, nothing in the United States patent laws prevents the straightforward application of California fraudulent transfer law, incorporated by 11 U.S.C. § 554(b), to the bankruptcy estate's recovery of fraudulently transferred patents.

Court's explicit language in *Allen* regarding the states' power to regulate fraudulent transfers of patents.

CONCLUSION

The Constants' untimely appeal from the bankruptcy court's final judgment precludes their merits-based arguments, and their petition for writ of certiorari should be denied on this basis. In any event, the Constants' petition fails to present any special and important reasons for granting certiorari. The bankruptcy court plainly had subject matter jurisdiction of this fraudulent transfer action, and nothing in the patent laws prevents the application of state fraudulent transfer law to allow the bankruptcy trustee to return fraudulently transferred patents to the bankruptcy estate.

Date: November 28, 1994

Respectfully submitted,

ANTHONY de ALCUAZ
Counsel of Record for
Respondents *David L. Ray and Saltzburg, Ray and Bergman*

SKJERVEN, MORRILL, MacPHERSON, FRANKLIN & FRIEL
25 Metro Drive, Suite 700
San Jose, California 95110
(408) 283-1222

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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re:	) CHAPTER 7
JAMES CONSTANT,	) Case No. LA 89-19270 KL
DAVID L. RAY, Chapter 7 Trustee,	) Adv. Case No. LA91-06842-KL
Plaintiff,	) FINDINGS OF FACT AND CONCLUSIONS OF LAW
vs.	) AFTER TRIAL
ARGERY CONSTANT, an individual,	) Entered: March 12, 1993
Defendant.	)

The above cause came on for trial on November 9, 1992. The matter was heard and submitted on November 9, 1992 and this Court issued its oral findings of fact, conclusions of law and orders thereon on November 10, 1992. The Court having heard the evidence and the arguments of counsel and the matter having been submitted, the Court finds and concludes as follows.

SUMMARY OF DECISION

Plaintiff Trustee Ray sued defendant Argerey Constant seeking to avoid the transfer of 22 United States patents (Exhibits 1-22) to Argerey Constant by her husband,

defendant James Constant. Trustee Ray asserts that the conveyance of the 22 United States patents to Argerey Constant by James Constant is voidable as a fraudulent conveyance.

This cause comes before the Court pursuant to 11 U.S.C. § 544(b) and under California Civil Code Sections 3439.04 and 3439.05. (Unless otherwise stated, citations to statutes below refer to the California Civil Code.) Mrs. Constant has raised a defense, under Section 3439.08(a), to Trustee Ray's claims under Section 3439.04(a).

In summary, with reference to this applicable law, the Court finds for Trustee Ray under Section 3439.04(a) and (b), and finds against the defendant on the defense contained in 3439.08(a). The Court further finds for Trustee Ray under Section 3439.05.

Specific findings of fact and conclusions of law are set forth below.[1]

FINDINGS OF FACT

1. Issue: Were the AMD Defendants (the defendants before the United States District Court for the Central District of California in Civil Action No. 85-0262-SVW, entitled James Constant v. Advanced Micro Devices, Inc. et al. (the "Patent Action")) creditors at the time of the challenged assignment from Mr. Constant to Mrs. Constant, i.e., on August 24, 1988?

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[1] Other undisputed facts, which support and form the basis of these findings and conclusions, are contained in the Admitted Facts portion of the Joint Pretrial Order.

The Court finds that the AMD Defendants were creditors of debtor Mr. Constant prior to and at the time of the challenged assignment. This finding is supported, inter alia, by the following exhibits and testimony: Exhibit 30 (the May 10, 1988 Order re-taxing costs in the Patent Action); Exhibit 28 (the District Court docket in the Patent Action showing the entry of the Order dated May 10, 1988); Exhibit 23 (the letter from Adrian Pruetz, counsel for Fujitsu, to James Constant dated June 27, 1988, which Mr. Constant has admitted receiving and which referred to the Order re-taxing costs (Exhibit 30) and enclosed a copy of such order to Mr. Constant); Exhibit 24 (Mr. Constant's letter of July 12, 1988 to Ms. Pruetz acknowledging receipt of Exhibit 23 and acknowledging Mr. Constant's obligation to the AMD Defendants under the Order re-taxing costs); the testimony of Mr. Constant during trial, during which he acknowledged that he understood prior to the date of the challenged assignment to his wife that he was a debtor and that the AMD Defendants were creditors based upon the Order re-taxing costs (Exhibit 30); and, the claims filed by the AMD Defendants in the bankruptcy of James Constant, judicial notice of which may be taken by this Court or any reviewing Court of Appeal.

2. Issue: Was the assignment by Mr. Constant to Mrs. Constant on August 24, 1988 made with the actual intent to hinder, delay or defraud the creditors of Mr. Constant?

The Court finds that Mr. Constant's assignment of the 22 United States patents in question to his wife on August 24, 1988 was made with the actual intent to hinder, delay and defraud his creditors. This finding is supported, inter alia, by the following evidence.

During trial, Mr. Constant testified that the existence of the Order re-taxing costs was at least one reason for the assignment to his wife and that he felt that he was "forced" into such assignment by the efforts of the AMD Defendants to enforce their judgment in the Patent Action. Mr. Constant's deposition testimony also confirms that he did not want the AMD Defendants to get his patents.

Moreover, this Court has examined the "Badges of Fraud" set forth, for example, in In Re Woodfield, 92 Daily Journal D.A.R. 14385, 1992 U.S.App. LEXIS 26902 (9th Cir. October 22, 1992) and in other cases and comment set forth in Plaintiff's Trial Brief at pages 16-18. Having considered the evidence relating to such Badges of Fraud, this Court finds that such consideration supports a finding of actual intent to hinder, delay and defraud in that:

(a) A close husband-wife relationship existed between Mr. Constant and Mrs. Constant which had a history of undocumented financial transactions between them;

(b) The assignment in question was made in anticipation of collection actions by the AMD Defendants. Exhibits 24, 25 (the August 17, 1988 letter from Craig Summers to James Constant confirming to Mr. Constant that the AMD Defendants intended to take action to enforce their judgment on or before August 27, 1988), and 26 (the August 24, 1988 assignment from Mr. Constant to Mrs. Constant), taken together with Mr. Constant's testimony concerning the motivation for the assignment discussed above, show that the assignment from Mr. Constant to Mrs. Constant was made three days before the date upon which the AMD Defendants had indicated that they would commence enforcement of the judgment in the Patent Action. To the extent Mr. Constant's

testimony at trial asserted that the AMD Defendants would have been unable to execute upon the judgment given his lack of assets, and that, therefor, the assignment was not motivated by the anticipation of collection efforts by the AMD Defendants, the Court finds that Mr. Constant's testimony is inconsistent with his actions in assigning the patents to his wife within the time set by Mr. Summers in Exhibit 26;

(c) Mr. Constant was insolvent at the time of the challenged assignment. Mr. Constant's testimony at trial, together with Exhibit 24 (Mr. Constant's July 12, 1988 letter to Ms. Pruetz), the deposition testimony of Mr. Constant read during trial, and the May 10, 1992 Order re-taxing costs in the amount of $123,832.00 against Mr. Constant, demonstrate that at the time of the assignment the sum of Mr. Constant's debts were greater than all of his assets and that Mr. Constant has generally not paying his debts and they became due;

(d) Mr. Constant's and Mrs. Constant's testimony concerning the August 24, 1988 assignment and previous assignments of property between Mr. and Mrs. Constant demonstrate that substantially all of Mr. Constant's property was transferred to Mrs. Constant on or before August 24, 1988 and that the August 24, 1988 transfer of the patents comprised an assignment of substantially all of Mr. Constant's remaining assets;

(e) Because in the years preceding August 24, 1988 Mr. Constant had transferred to Mrs. Constant substantially all of his assets, save the 22 patents which are the subject of this fraudulent transfer action, the assignment of the 22 patents in question from Mr. Constant to Mrs. Constant depleted the debtor's assets such that the creditors

have been effectively hindered and delayed in recovering any part of their judgment. Mr. and Mrs. Constant's testimony from the stand during trial, Exhibit 24 (the July 12, 1998 from Mr. Constant to Mrs. Pruetz) and the bankruptcy schedules filed by Mr. Constant herein demonstrate that at the time of the assignment of the patents in question to his wife, Mr. Constant had depleted substantially all of his assets, thereby hindering and delaying the AMD Defendants and other creditors;

(f) For the reasons stated more fully below, the assignment from Mr. Constant to Mrs. Constant of the 22 patents in question was not supported by adequate compensation.

Having found that each of the Badges of Fraud was present in this transaction, and that Mr. Constant's testimony at trial supports the existence of an actual intent to hinder, delay and defraud, and having noted that Mr. Constant's deposition testimony, read in open court during trial and submitted as part of the record herein, further supports such finding, this Court has found that Mr. Constant did convey the 22 patents in question to his wife with such actual intent.

3. Issue: Did Argerey Constant receive the assignment of the 22 patents in question in good faith?

This Court finds that Mrs. Constant did not receive the assignment of the 22 patents in question in good faith because, inter alia, Mrs. Constant knew of the existence of the Patent Action and knew of the existence of the Order re-taxing costs against Mr. Constant at the time of the assignment.

Mrs. Constant testified in deposition that, prior to the February 27, 1992 date of her deposition, she did not know that Mr. Constant had been ordered to pay fees and costs to the AMD Defendants in the Patent Action. See Mrs. Constant's February 27, 1992 deposition transcript, page 28, line 10 to page 29, line 5. At trial, Mrs. Constant's testimony ultimately was that she did not recall whether she did or did not know that the Order re-taxing costs had been entered. In this regard, the Court specifically finds that the testimony of Mrs. Constant and Mr. Constant, to the extent that either testified, that Mr. Constant did not inform Mrs. Constant of the existence of the Order re-taxing costs at the time of the Order on May 10, 1988, is not credible. Mr. Constant testified, and Mrs. Constant confirmed, that Mr. Constant kept Mrs. Constant informed as to the general progress of the Patent action. Mr. Constant testified that he informed his wife of "significant points." It is not credible to assert either that the award of $123,832.00 against Mr. Constant in the Patent Action was not a "significant point" or that the award was not discussed between Mr. and Mrs. Constant. Mr. Constant could not deny that he had informed Mrs. Constant about the Order. The Court's finding that Mr. Constant did, in fact, inform Mrs. Constant of the Order re-taxing costs is supported by the testimony discussed above, and further supported by deposition testimony of Mr. Constant read into the record during trial.

As further evidence of Mrs. Constant's lack of good faith, Mrs. Constant testified during trial that she had no use for and made no use of the 22 patents in question except for "sentimental value." This fact, taken in conjunction with Mr. and Mrs. Constant's other actions with respect to the patents (see Findings for Issue 4 below, including subparagraph (b)), further supports a finding that Mrs. Constant did not receive the patents in good faith.

4. Issue: Did Mr. Constant receive reasonably equivalent value in exchange for the assignment of the 22 patents in question?

This Court finds that Mr. Constant did not receive reasonably equivalent value in exchange for the transfer of the 22 patents in question. Both Mr. and Mrs. Constant testified at trial that $10.00 was the sole consideration for the assignment at issue. Exhibits 41 and 42 (the Requests for Admission of plaintiff, together with the responses thereto of defendant Argerey Constant) further support the finding that at most $10.00 was the sole consideration for the conveyance.

This Court is not satisfied that this $10.00 amount was actually paid by Mrs. Constant to Mr. Constant, and makes no finding that such payment was actually paid. However, even if Mrs. Constant paid Mr. Constant the $10.00, the Court finds that $10.00 was not reasonably equivalent value for the 22 patents. While this Court finds that Mr. Constant's rejection of the proposal contained within Exhibit 26 (Mr. Summers' letter of August 17, 1988) does not establish the value of the patents at or near the time of the assignment because other items were included in the demanded consideration for such proposal, this Court finds that other credible evidence establishes that $10.00 was not reasonably equivalent value for the 22 patents in question on August 24, 1988, including inter alia:

(a) The cost of obtaining the patents -- Mr. Constant testified both at trial and during deposition that such cost was likely been between $500 and $2,000 per patent for Patent Office fees and attorneys' fees. These costs indicate that it is likely that the patents had some value and that such value was likely in excess of ten dollars. The

testimony of Paul J. Winters, an expert called by plaintiff Trustee Ray during trial, establishes that at the time of the assignment Patent Office fees to apply for and have issued a United States patent were at least $165 per patent, and that substantial additional attorneys' fees to obtain those patents would likely also have to be incurred;

(b) Mrs. Constant, on or about April 16, 1990, paid the Patent Office $225.00 in fees to maintain for a period of three and one-half years (out of the 17-year life of a patent) just one of the 22 Patents. See Exhibit 27 (a certified copy of Patent Office documents showing the payment by check by Argerey Constant of a maintenance fee in the amount of $225 for United States Patent No. 4,620,290) and the related testimony of Mr. and Mrs. Constant at trial. This fact supports a finding that Mrs. Constant believed that the maintenance of a single one of the 22 patents in question for a period of three and one-half years was worth at least $225. Mr. Constant testified that he probably advised Mrs. Constant to pay this maintenance fee. Accordingly, both Mr. and Mrs. Constant believed that the patents here in issue had more than "sentimental value," and that the value of the single patent upon which the maintenance fee was paid for a period of three and one-half years was substantially greater than $10.00;

(c) Mr. and Mrs. Constant's failure to successfully generate income from the patents in question does not, as contended by her, establish that the patents had no value. Mr. Winters testified that the value of the 22 patents would be based upon both their offensive and their defensive value, and that such offensive and defensive value was substantially greater than $10.00 in 1988. This Court finds that Mr. Winters' experience, training, and expertise in the areas of the valuation of patents and licenses thereunder, and the

costs entailed in obtaining and maintaining patents, support his conclusions in this regard.

Accordingly, this Court finds that Mr. Constant did not receive reasonably equivalent value for the conveyance of the 22 patents in question on August 24, 1988.

5. Issue: Did Mr. Constant believe or, should he have reasonably believed, that he would incur debts in the future beyond his ability to pay as they became due?

This Court finds that Mr. Constant did believe, and reasonably should have believed, that by virtue of the assignment in question, and his previous conveyances of his real and personal property to his wife, he would be unable to pay debts incurred in the future. At trial Mr. Constant testified that his business was as an inventor. A portion of this business, was Mr. Constant's enforcement of patents. This, in turn, required funds for the purpose of enforcing patents. Before 1988, Mr. Constant had brought lawsuits and had lost judgments in those prior cases. Mr. Constant should have been aware and this Court finds he was aware, that by conveying the 22 patents in question to his wife, he was effectively rendering himself unable to pay debts which he reasonably should have anticipated incurring in the course of his enunciated profession, i.e., an inventor who obtains and enforces patents.

6. Issue: Was Mr. Constant insolvent at the time of the assignment?

For the reasons set forth above, this Court finds that Mr. Constant was insolvent at the time of the August 24, 1988 assignment to his wife. In addition to the evidence discussed above, Mr. Constant testified at trial that he could

not pay his obligations currently in August 1988. Mrs. Constant confirmed this fact. Mr. Constant's attempt to establish that he was solvent by placing a value upon the causes of action that he either had or could have asserted in August 1988 does not establish the value of those claims. Any such valuation is purely speculative, and further is contradicted by the eventual outcome of Mr. Constant's other patent infringement lawsuits, which he lost. As discussed more fully above, Exhibit 24, and Mr. Constant's financial statement filed with the District Court discussed in Exhibit 24, establish Mr. Constant's admitted insolvency on an asset/liability basis, and Mr. Constant's testimony at trial that he could not pay his obligations currently in August, 1988 establishes that he did not have that ability at the time of the assignment to his wife.

7. Issue: Assuming Mr. Constant was not insolvent immediately before the assignment of the 22 patents, did he become insolvent as a result of the assignment?

If Mr. Constant were not already insolvent before the assignment of the 22 patents in question to his wife on August 24, 1988, this Court finds that such assignment rendered Mr. Constant insolvent thereafter. As confirmed by Mr. and Mrs. Constant and by the deposition testimony of Mr. Constant read during trial and submitted as part of this record, Mr. Constant had no independent source of income in 1988, had been supported by and conducting his business with funds lent to him by Mrs. Constant for some time in 1988, and Mr. Constant had conveyed substantially everything of value he owned except the 22 patents in question to Mrs. Constant prior to August 24, 1988. Therefore, the assignment of the 22 patents in question to his wife on August 24, 1988 rendered Mr. Constant insolvent to

the extent that he was not insolvent prior to such assignment. Again, Mr. Constant's testimony, Mrs. Constant's testimony and Exhibit 24 establish that Mr. Constant was insolvent upon such date using any measure of insolvency.

FURTHER ISSUES OF FACT SET FORTH IN THE JOINT PRETRIAL ORDER

Upon the "Facts Remaining to be Litigated" set forth in the Joint Pretrial Order, the Court finds as follows:

1. This Court finds that the District Court in the Patent Action entered an Order granting defendants' motion to re-tax costs and denying plaintiff's motion to dismiss and disallow costs and for sanctions on May 10, 1988 (Exhibit 30). This Court finds that pursuant to such Order, the AMD Defendants were awarded certain costs of suit; said costs amount to $123,832.00 plus interest from November 9, 1987. This Court finds that the judgment of the District Court was affirmed by the United States Court of Appeals for the Federal Circuit (Exhibit 31) and that certiorari was denied by the United States Supreme Court (Exhibit 37).

2. For the reasons stated above, and based upon the admissions of both Mr. and Mrs. Constant at trial, this Court finds that the sole consideration paid by Mrs. Constant to Mr. Constant for the assignment of the subject patents was ten dollars (if such amount was actually paid).

3. For the reasons stated above, and more particularly based upon the exhibits enumerated in this paragraph, this Court finds that at the time of the assignment, the AMD Defendants were creditors of Mr. Constant under the definition of Section 3439.01(c) of the

California Civil Code. This conclusion is supported by Exhibit 30 (Order granting motion to re-tax costs), Exhibit 28 (docket sheet in the Patent Action indicating entry of Order and Mr. Constant's appeal therefrom), Exhibit 31 (Court of Appeals decision), Exhibit 36 (the Court of Appeals opinion), Exhibit 37 (Denial of Certiorari), Exhibits 38 and 39 (bankruptcy filings of James Constant listing the claims of the AMD Defendants), Exhibit 24 (July 12, 1988 letter from Mr. Constant to Adrian Pruetz acknowledging the obligation created by the Order re-taxing costs).

4. For the reasons stated above, this Court finds that at the time of the assignment Mr. Constant was a debtor of the AMD Defendants under the definition of Section 3439.01(e) of the California Civil Code.

5. This Court finds that at the time of the assignment the AMD Defendants had claims against Mr. Constant under the definition of Section 3439.01(b) of the California Civil Code for which Mr. Constant was liable and that such claims amounted to $123,832.00 plus interest from November 9, 1987. Such finding is based upon the evidence discussed above, including the claims of the AMD Defendants herein of which this Court and any reviewing court may take judicial notice at any time.

6. This Court finds that from November 9, 1987 the AMD Defendants were creditors of Mr. Constant under the definition of Section 3439.01(c) of the California Civil Code. Such finding is based upon the evidence discussed above, including, inter alia, Exhibit 28 (District Court docket sheet) Exhibit 29 (November 6, 1987 Judgment in the Patent Action); Exhibit 30 (May 10, 1988 Order re-taking costs); Exhibit 31 (Court of Appeals Judgment); Exhibit 36 (Court of Appeals opinion); Exhibit 37 (Supreme Court denial of

certiorari); Exhibits 38 and 39 (Mr. Constant's bankruptcy petition and schedules); and the trial testimony of Mr. Constant.

7. For the reasons set forth above, this Court finds that from November 9, 1987 Mr. Constant was a debtor of the AMD Defendants under the definition of Section 3439.01(e) of the California Civil Code.

8. For the reasons set forth above, this Court finds that from November 9, 1987 the AMD Defendants had claims against Mr. Constant under the definition of Section 3439.01(b) of the California Civil Code for which Mr. Constant was liable and, from May 10, 1988, said claims amounted to $123,832.00 plus interest from November 9, 1987.

9. For the reasons set forth above, this Court finds that Mr. Constant made the assignment of the subject patents with actual intent to hinder, delay and defraud his creditors, including the AMD Defendants.

10. For the reasons set forth above, this Court finds that at the time of the assignment, August 24, 1988, Mr. Constant was insolvent under the definition of Section 3439.02 of the California Civil Code or became insolvent as a result of the assignment.

11. For the reasons set forth above, this Court finds that at the time of the assignment, August 24, 1988, at fair valuations, Mr. Constant's debts were greater than all his assets.

12. For the reasons stated above, this Court finds that at the time of the assignment, August 24, 1988, Mr.

Constant was not generally paying his debts as they became due. This finding is also supported, inter alia, by Exhibit 24 and Mr. and Mrs. Constant's testimony at trial.

13. For the reasons stated above, this Court finds that the fair market value of the 22 patents at the time of the assignment on August 24, 1988 was greater than $10.00, and probably substantially greater than $10.00.

14. This Court makes no finding upon factual issue No. 14 in the Joint Pretrial Order because the determination of the actual fair market value of the 22 patents in question on August 24, 1988 is not an issue necessary to any finding of this Court stated herein.

15. For the reasons stated above, this Court finds that Mr. Constant did not receive reasonably equivalent value in exchange for his assignment of the subject patents to Mrs. Constant.

16. For the reasons stated above, this Court finds that Mrs. Constant did not take the subject patents in good faith and for reasonably equivalent value.

17. For the reasons stated above, and further noted below, this Court finds that Ray and Mr. Constant's creditors have been, and without the intervention of this Court will continue to be, irreparably injured by the fraudulent transfer and by Mr. and Mrs. Constant's wrongful conduct in assigning and maintaining the assignment of the 22 patents in question.

ISSUES OF LAW FROM JOINT PRETRIAL ORDER

On the issues of law described in the Joint Pretrial Order, this Court concludes as follows:

1. This Court concludes that the assignment executed by Mr. Constant on August 24, 1988 was a fraudulent transfer within the meaning of Section 3439.04(a) and 3439.04(b)(2) of the California Civil Code.

2. This Court concludes that the assignment executed by Mr. Constant on August 24, 1988 was a fraudulent transfer within the meaning of Section 3439.05 of the California Civil Code.

3. Defendant Argerey Constant having withdrawn and abandoned the arguments and defenses giving rise to the issues of law listed in paragraph No. 3 on page 6 of the Joint Pretrial Order, the Court makes no finding as to the issues stated therein.

4. The AMD Defendants had allowable claims against Mr. Constant at the time of the assignment.

5. A cause of action under 11 U.S.C. § 544 does not require the AMD Defendants or other persons to have been creditors of Mr. Constant at the time of the assignment. See also Cal. Civ. Code § 3439.04 ("claim arose before or after the transfer"). Regardless, as found above, the AMD Defendants were creditors of Mr. Constant at the time of the assignment.

6. Having determined that the assignment of August 24, 1988 was a fraudulent transfer under both Sections 3439.04 and 3439.05 of the California Civil Code,

this Court further finds that Trustee Ray is entitled to and should be awarded the following remedies, inter alia:

A. The avoidance of the assignment dated August 24, 1988 for each and every of the patents listed therein;

B. The issuance of attachments or such other orders as may be necessary to secure recovery of the patents by Trustee Ray;

C. The issuance of an injunction against Mrs. Constant and other persons acting in concert with Mrs. Constant from further transferring or otherwise encumbering the subject 22 patents, pursuant to Section 3439.07 of the California Civil Code.

Date: March 9, 1993

Kathleen T. Lax
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re:	) CHAPTER 7
JAMES CONSTANT,	) Case No. LA 89-19270 KL
DAVID L. RAY, Chapter 7 Trustee,	) Adv. Case No. LA91-06842-KL
Plaintiff,	) JUDGMENT
vs.	) Entered: March 12, 1993
ARGERY CONSTANT, an individual,	)
Defendant.	)

In accordance with the findings of fact and conclusions of law signed by the Court after trial on March 9, 1993, and entered thereafter.

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

1. The August 24, 1988 assignment by James Constant to Argerey Constant of the following 22 United States Letters Patent (hereinafter "Patents") is hereby avoided:

United States Patent No. 3,691,557
United States Patent No. 3,790,939

United States Patent No. 3,798,644
United States Patent No. 3,858,203
United States Patent No. 3,896,435
United States Patent No. 3,965,342
United States Patent No. 3,965,472
United States Patent No. 3,971,993
United States Patent No. 3,988,572
United States Patent No. 4,025,772
United States Patent No. 4,053,750
United States Patent No. 4,067,009
United States Patent No. 4,082,991
United States Patent No. 4,117,481
United States Patent No. 4,156,919
United States Patent No. 4,164,740
United States Patent No. 4,187,000
United States Patent No. 4,228,517
United States Patent No. 4,292,579
United States Patent No. 4,620,290
United States Patent No. 4,707,698
United States Patent No. 4,737,930.

All of the Patents are the property of the bankruptcy estate and shall be subject to disposition by Chapter 7 Trustee David L. Ray in accordance with the United States Bankruptcy Code and Rules.

2. Defendant Argerey Constant and all persons in active concert or participation with her (including without limitation James Constant) are permanently enjoined from assigning, transferring, dedicating to the public, licensing, encumbering, or otherwise disposing of any of the Patents.

3. The Court shall retain jurisdiction of this action and the parties to (i) issue such attachments or such other orders as may be necessary to aid in execution of this

Judgment and to secure recovery of the Patents by Trustee Ray, and (ii) hear and determine Trustee Ray's applications for the award of fees, costs and expenses in this action.

This judgment constitutes the final judgment of this action and shall be entered forthwith by the Clerk of the Court.

Dated: March 9, 1993

Kathleen T. Lax
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re:	) CHAPTER 7
JAMES CONSTANT,	) Case No. LA 89-19270 KL
DAVID L. RAY, Chapter 7 Trustee,	) Adv. Case No. LA91-06842-KL
Plaintiff,	) ORDER IN AID OF JUDGMENT REQUIRING ASSIGNMENT OF PATENTS
vs.	
ARGERY CONSTANT, an individual,	) Entered: March 15, 1993
Defendant.	

This action having been tried to the Court, the Court having rendered its findings of fact and conclusions of law and the following order being necessary to aid the execution of the Court's previous findings, conclusions, orders and judgment,

IT IS HEREBY ORDERED:

1. The U.S. Patents listed immediately below are hereby assigned to the Chapter 7 Trustee in this bankruptcy case, David L. Ray:

United States Patent No. 3,691,557
United States Patent No. 3,790,939
United States Patent No. 3,798,644
United States Patent No. 3,858,203
United States Patent No. 3,896,435
United States Patent No. 3,965,342
United States Patent No. 3,965,472
United States Patent No. 3,971,993
United States Patent No. 3,988,572
United States Patent No. 4,025,772
United States Patent No. 4,053,750
United States Patent No. 4,067,009
United States Patent No. 4,082,991
United States Patent No. 4,117,481
United States Patent No. 4,156,919
United States Patent No. 4,164,740
United States Patent No. 4,187,000
United States Patent No. 4,228,517
United States Patent No. 4,292,579
United States Patent No. 4,620,290
United States Patent No. 4,707,698
United States Patent No. 4,737,930.

2. Within ten (10) days of entry of this Order, Defendant Argerey Constant (i) shall execute an assignment of the above patents to the U.S. Trustee in the form attached as Exhibit A hereto; (ii) shall have such assignment notarized; and (iii) shall deliver such notarized assignment to Trustee Ray with copy to his counsel.

3. If Mrs. Constant fails to so execute, have notarized, and deliver the assignment to the Chapter 7 Trustee within ten (10) days of the date of entry of this Order, the Clerk of this Court is ordered to execute such assignment and such assignment shall have the same force

and effect as if executed by Mrs. Constant and shall be binding upon Mrs. Constant, her heirs and her actual or purported assignees.

Dated: March 9, 1993

Kathleen T. Lax
United States Bankruptcy Judge

ASSIGNMENT OF UNITED STATES LETTER PATENTS

Whereas I, Argerey Constant, residing at 1603 Danbury Drive, in the City of Claremont, County of Los Angeles, and State of California, am the record title holder of the following Letter Patents of the United States:

United States Patent No. 3,691,557
United States Patent No. 3,790,939
United States Patent No. 3,798,644
United States Patent No. 3,858,203
United States Patent No. 3,896,435
United States Patent No. 3,965,342
United States Patent No. 3,965,472
United States Patent No. 3,971,993
United States Patent No. 3,988,572
United States Patent No. 4,025,772
United States Patent No. 4,053,750
United States Patent No. 4,067,009
United States Patent No. 4,082,991
United States Patent No. 4,117,481
United States Patent No. 4,156,919
United States Patent No. 4,164,740
United States Patent No. 4,187,000
United States Patent No. 4,228,517
United States Patent No. 4,292,579
United States Patent No. 4,620,290
United States Patent No. 4,707,698
United States Patent No. 4,737,930

I, Argerey Constant, hereby assign to the Chapter 7 Trustee, David L. Ray, the entire right, title and interest, in and to each of the above-referenced Letters Patents to the

full end of the term for which said Letters Patents are granted, as fully and entirely as the same would have been held by me had this assignment and sale not been made.

Executed this 1st day of June, 1993, at Los Angeles, California.

ARGEREY CONSTANT

Frank E. Goodroe
Clerk of the Court

United States Bankruptcy Court
Central District of California

STATUTES AND RULES

The following is the pertinent text of the statutes and rules involved in this case in addition to those set forth in petitioners' appendix:

28 U.S.C. § 157(b)(1), b(2)(H)

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to --. . . .

(H) proceedings to determine, avoid, or recover fraudulent conveyances.

28 U.S.C. § 158(a)

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

Bankruptcy Rule 7070

Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is subject to the jurisdiction of the bankruptcy court.

Bankruptcy Rule 8002(a)

The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within (10) days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

California Civil Code § 3439.04(a)

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

California Civil Code § 3439.05

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

California Civil Code § 3439.07(a)(1)

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 3439.08, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim . . . .